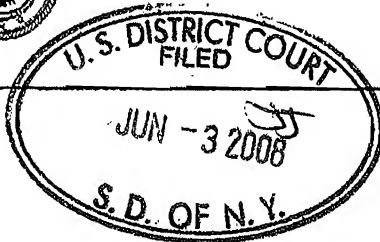


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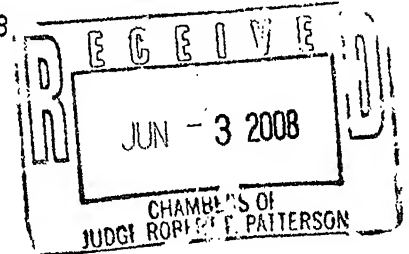
U.S. Department of Justice

United States Attorney  
Southern District of New York



The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

June 2, 2008.



**BY FACSIMILE**

The Honorable Robert P. Patterson  
United States District Judge  
500 Pearl Street  
New York, NY 10007

Re: United States v. Daniel B. Karron,  
S2 07 Cr. 541 (RPP)

Dear Judge Patterson:

The Government respectfully submits this letter to move in limine to admit certain testimony that a number of Government witnesses are expected to give.

**I. Background**

A number of Government witnesses who worked with the defendant at Computer Aided Surgery, Inc. ("CASI") will testify that, while they were employed at CASI, they had personal, direct knowledge about the defendant's electronic bookkeeping system, known as Quickbooks. They will further testify that, as part of their everyday duties and responsibilities, they were asked by the defendant to make data entries regarding the defendant's and CASI's expenditures in Quickbooks. After they made these entries, however, the defendant frequently altered their work - for example, by changing what these witnesses characterized as an "unallowable" or "non-grant-related expense" back into an "allowable" or "grant-related expense" in the Quickbooks ledger.

These witnesses will testify that, individually and collectively, they told the defendant on multiple occasions to stop "mucking around the books," but the defendant persisted in his conduct and repeatedly violated the controls that his own employees sought to implement. As a result of this tug-of-war, the Quickbooks ledger was not a stable document but was constantly in a state of flux.

## II. Relevance

The Government submits that such testimony is directly relevant to the defendant's state of mind and, hence, should be admissible as evidence at trial. From defense counsel's opening statement this afternoon, it is apparent that the defense intends to argue to the jury that the defendant had nothing to hide, that while mistakes were made, they were made by other people, and that the defendant had no criminal intent to misapply grant funds. Evidence that the defendant attempted actively to interfere with accurate bookkeeping showing how grant funds were spent at CASI goes directly to the defendant's criminal intent.

## III. Non-hearsay

The Government also respectfully submits that such testimony is not hearsay. Defense counsel has indicated to us that, should the "Quickbooks ledger" not be admitted into evidence, he might object to witness testimony about the ledger on hearsay grounds. For the reasons set forth below, the Government submits that any such hearsay objections are meritless.

The Government witnesses' testimony about the ledger is not for the truth of the information contained in the ledger. Indeed, the Government's argument is just the opposite - that, as a result of the defendant's interference with the work of his auditors, bookkeepers, and business managers, the ledger was frequently inaccurate. The witnesses' testimony about the ledger is offered for a different, non-hearsay, purpose: to show simply that the defendant made alterations to Quickbooks against the warnings of his employees - alterations of which these witnesses had direct, personal knowledge - and which would, in turn, illuminate the defendant's state of mind while the misapplication of CASI's and the grant's funds was occurring.

Furthermore, to require the admissibility of the ledger as a precondition of, or alternative to, such witnesses' testimony is to require the impossible. As noted above, because of the defendant's constant changes to the Quickbooks entries, CASI's ledger was in a constant state of change, with the witnesses making certain bookkeeping entries, only to have them changed back in a manner that suited the defendant. There is no comprehensive document that records every keystroke made in Quickbooks that captures every alteration the defendant made. Because the Government's witnesses are testifying as to what they directly observed, however, their testimony is no different from the typical percipient witness who testifies as to what he

The Honorable Robert P. Patterson  
June 2, 2008  
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observed from his own senses. The mere fact that the subject of these witnesses' observation was an evolving document - as opposed to, say, a car accident - does not make their testimony hearsay. And just as an eyewitness's testimony about a car accident is not made any less admissible because his observations were not recorded on camera, the Government witnesses's testimony about the changing ledger is not any less admissible because there does not exist a contemporaneous record documenting such changes over time.

#### IV. Expert Testimony

Finally, at least with respect to two of the Government's witnesses - Joan Hayes and Belinda Riley - who are expected to be qualified as expert witnesses, the Rules of Evidence explicitly do not require the admissibility of the underlying documents for their expert testimony to be admissible. See Fed. R. Evid. 703 ("If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.").


#### V. Conclusion

For the foregoing reasons, the Government respectfully submits that the proffered testimony of Government witnesses concerning changes to Quickbooks the defendant made is non-hearsay evidence and admissible at trial.

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney

By:

  
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Chi T. Steve Kwok  
Christian R. Everdell  
Assistant United States Attorneys  
(212) 637-2415 / (212) 637-2556

cc: Ron Rubinstein, Esq. (by fax and email)  
Counsel to Daniel B. Karron



FACSIMILE COVER SHEET

U.S. ATTORNEY'S OFFICE, S.D.N.Y.  
ONE ST. ANDREW'S PLAZA  
NEW YORK, NEW YORK 10007

\*\*\*\*\*

From: Steve Kwok  
Assistant United States Attorney

Phone: (212) 637-2415

Fax: (212) 637-2390

No. pages (including cover sheet): 4

Date sent: June 2, 2008

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To: The Honorable Robert P. Patterson  
212-805-7917

To: Mr. Ron Rubinstein  
212-679-1844

Re: US v. Karron, S2 07 Cr. 541 (RPP)

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Message:

Please see the attached letter. Thank you.